

Bill no. 71-81
Draft no. & Date: 2 - 1/25/82
Introduced: 11/3/81
Expiration Date: 5/3/83
Enacted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
Nov. _____ Legislative Session _____ 1981

By: Council President at the request of the
County Executive

AN ACT to amend Chapter 33, title "Personnel" of the Montgomery County Code 1972, as amended, by amending Subsection 33-63(c) of Section 33-63, title "Definitions", of Article IV, title "Employer - Employee Relations" to provide that police department employees who are represented by a certified employee organization pursuant to Article V of this Chapter shall not be considered an employee under Article IV of this Chapter; by amending Section 33-74, title "Cost of Living Adjustment" to provide that this section shall not apply to an employee of the police department who is represented by a certified employee organization pursuant to Article V of this Chapter; and by adding a new Article V, title "Police Labor Relations", Sections 33-75 through 33-85, to provide for a policy statement, definitions to be used in the Article, creation of a permanent umpire in order to administer and implement certain provisions of the Article, certain employee rights, the selection, certification, and decertification procedures, subjects

which would be appropriate for collective bargaining,
subjects which would not be appropriate for collective
bargaining, impasse procedures, prohibited employer
and employee practices, certain provisions concerning
strikes and lockouts, use of official time of employees,
and the effect of prior enactments.

Be It Enacted by the County Council for Montgomery County, Maryland
that -

1 Sec. 1. Subsection 33-63(c) of Section 33-63, title
2 "Definitions" of Article IV, title "Employer-Employee Relations"
3 of Chapter 33, title "Personnel", of the Montgomery County Code
4 1972, as amended, is hereby amended, to read as follows:

5 Sec. 33-63. Definitions.

6 * * *

7 (c) Employee. Any county merit system employee working
8 on a continuous full-time, career or part-time, career basis,
9 eligible to be included in a unit of recognition except for the
10 following:

- 11 (1) Confidential aides to elected officials;
- 12 (2) All non-merit system employees;
- 13 (3) All heads of principal departments, offices
14 and agencies;
- 15 (4) Deputy or assistant department heads;
- 16 (5) Employees providing direct staff or administra-
17 tive support to the director of the department,
18 or deputy or assistant directors within the
19 director's immediate office;
- 20 (6) Employees who report directly to or whose
21 immediate supervisor is the county executive,
22 county council, county council members or
23 the chief administrative officer and the
24 principal aides to the foregoing;
- 25 (7) Employees of the office of the county attorney;
- 26 (8) Employees of the office of budget and research;
- 27 (9) Employees of the office of employee relations;
- 28 (10) Employees of the personnel office;
- 29 (11) Employees of the personnel board;
- 30 (12) Heads of the following constituent offices,
31 divisions and sections in the department of
32 transportation existing at the time of

1 enactment of this bill and positions carrying
2 a similar degree of personnel management
3 responsibilities in other departments and
4 offices as determined by the chief administrative
5 officer:

6 Director's office, office of the right-of-
7 way acquisition, office of administrative
8 services, office of transportation planning,
9 division of transportation engineering, sub-
10 division development section, design section,
11 construction section, division of traffic
12 engineering, traffic planning and survey section,
13 traffic operations section, division of
14 operations, TESS Minibus, highway maintenance
15 section, equipment section and division of
16 parking lot districts.

17 (13) An employee of the police department, as defined
18 in Section 33-76 of this Chapter, who is
19 represented by a certified employee organization
20 pursuant to the provisions of Article V, title
21 "Police Labor Relations" of this Chapter.

22 Sec. 2. Section 33-74, title "Cost of Living Adjustment",
23 of Article IV, title "Employer - Employee Relations", of
24 Chapter 33, title "Personnel" of the Montgomery County Code 1972,
25 as amended, is hereby amended, by adding a new Subsection (c),
26 to read as follows:

27 Sec. 33-74. Cost of living adjustment.

28 (a) The county executive shall provide as a part of the
29 annual recommended operating budget for the county government
30 sufficient funds to implement the cost of living adjustment
31 required by this section. The council shall accord one of the
32 highest priorities to the full funding of the cost of living

1 adjustment, shall fund fully the seventy-five percent of
2 Consumer Price Index cost of living adjustment unless reasons
3 are given for not doing so, and shall make a finding in the
4 budget resolution as to the extent to which full funding is
5 achieved. Unless otherwise provided in the approved budget
6 resolution which includes a finding that implementation of the
7 full amount of the adjustment would necessitate substantial
8 lay-offs of personnel or result in other widespread hardship
9 to county government employees, the chief administrative
10 officer shall adjust the uniform salary plan for all classified
11 employees of the county government beginning the first pay
12 period on or after July 1 of each year by an amount not less
13 than seventy-five percent of the change in the Consumer Price
14 Index for all urban consumers in the Washington, D.C. area,
15 although pay grades one through four of the uniform salary plan
16 to which minimum wage and certain seasonal employees are
17 assigned will be adjusted by changes in the minimum wage rates
18 and salary surveys to determine the competitiveness of such
19 salaries. The percentage change shall be based on the latest
20 published index for the calendar year preceding the fiscal year
21 in which the adjustment is to be paid.

22 The chief administrative officer may adjust the uniform
23 salary plan in excess of the base percentage of seventy-five
24 percent, provided funds are available and approved by the
25 county council for such purpose.

26 (b) Notwithstanding the provisions in (a) above, for
27 FY-82 only the following salary controls shall apply:

- 28 1. Salary maxima of grades 5 through 31 will be
29 adjusted by the full cost-of-living granted
30 by the County Council.
- 31 2. The salary maximum for grade 40 shall be
32 \$70,000.00.

- 1 3. The salary maxima for grades 32 through 39 shall
2 be adjusted by the Chief Administrative Officer
3 so that the dollar difference between the
4 salary maxima of grades 31 through 40 is the
5 same.
- 6 4. The salary for each merit employee in grades 5-31
7 will be adjusted by the full cost-of-living
8 granted by the County Council to the extent that
9 such salary adjustment does not exceed the maximum
10 of the employee's grade.
- 11 5. The salaries for merit employees in grades 32
12 through 39 will be adjusted by the full cost-of-
13 living granted by the County Council only to the
14 extent that such salary adjustment does not exceed
15 the maximum of the employee's grade.
- 16 6. The cost-of-living adjustment to the salaries of
17 non-merit employees shall be determined by the
18 County Executive but shall not exceed the cost-
19 of-living granted merit employees.
- 20 7. No employee's salary is to be reduced below
21 its level as of June 30, 1981 as a result of
22 implementation of the provisions contained in
23 paragraphs 1- 6 above.

24 (c) The provisions of this section shall not apply to an
25 employee of the police department, as defined in Section 33-76
26 of this chapter, who is represented by a certified employee
27 organization pursuant to the provisions of Article V, Title
28 "Police Labor Relations" of this chapter.

29 Sec. 3. Chapter 33, title "Personnel" of the Montgomery
30 County Code 1972, as amended, is hereby amended by adding a
31 new Article V, title "Police Labor Relations", Sections 33-75
32 through 33-85, to read as follows:

1 ARTICLE V. POLICE LABOR RELATIONS.

2 Sec. 33-75. DECLARATION OF POLICY.

3 It is the public policy of this County, pursuant to
4 Charter Section 510, enacted as a result of citizen initiative,
5 and purpose of this Article to promote a harmonious, peaceful,
6 and cooperative relationship between the County government
7 and its police employees and to protect the public by assuring,
8 at all times, the responsive, orderly, and efficient operation
9 of the police department. Since unresolved disputes in the
10 police service are injurious to the public and to police
11 employees as well, adequate means should be provided for
12 preventing such unresolved disputes and for resolving them
13 when they occur. To that end, it is in the public interest
14 that police employees have the opportunity to bargain
15 collectively OVER WAGES, HOURS, AND OTHER TERMS AND CONDITIONS
16 OF EMPLOYMENT through a representative of their choice or to
17 refrain therefrom; and that any collective bargaining between
18 the County government and a representative of those police
19 employees be done in good faith with no interference with the
20 orderly process of government and furthermore, that ~~the-results~~
21 ~~of~~ AGREEMENTS REACHED THROUGH collective bargaining be imple-
22 mented.

23 It is also recognized however, that police employee
24 organizations AND THE COUNTY GOVERNMENT EACH possess
25 substantial means by which they may initiate ~~governmental~~
26 actions regarding the wages, hours, and working conditions
27 of employees ~~they-represent-or-seek-to-represent~~. Conse-
28 quently, in order to preserve ~~the-delicate~~ AN APPROPRIATE
29 balance between labor and management in the police service,
30 the Council hereby declares that ~~collective-bargaining-may~~
31 ~~be~~ ONCE A REPRESENTATIVE HAS BEEN voluntarily selected
32 COLLECTIVE BARGAINING SHALL BE UTILIZED in place of, but not

1 in addition to existing means of initiating governmental
2 action as to those subjects which are defined as appropriate
3 for collective bargaining in this Article.

4 Sec. 33-76. DEFINITIONS.

5 When used in this Article:

6 "Agency Shop" means a provision in a collective
7 bargaining agreement requiring, as a condition of continued
8 employment, that bargaining unit employees pay a service
9 fee not to exceed the monthly membership dues uniformly
10 and regularly required by the employee organization of
11 all of its members. An agency shop agreement shall not
12 require the payment of initiation fees, an assessment, fines
13 or any other collections or their equivalent, as a condition
14 of continued employment.

15 To "bargain collectively" means to meet at reasonable
16 times and places and to negotiate in good faith with respect
17 to appropriate subjects as set out in subsection 33-80(a)
18 of this Article.

19 "Employee" means any police officer in the classifica-
20 tion of Master Police Officer I, Master Police Officer II,
21 Police Officer I, Police Officer II, Police Officer III,
22 and Police Officer Candidate, or equivalent non-supervisory
23 classifications, but not those in the classification of Police
24 Sergeant or any equivalent or higher classification.

25 "Employer" means the County Executive and his
26 designees.

27 "Employee Organization" means any organization which
28 admits to membership employees and which has as a primary purpose
29 the representation of such employees in collective bargaining,
30 and includes any person acting as an officer, representative,
31 or agent of said organization. SUCH ORGANIZATION SHALL NOT AD-
32 MIT TO MEMBERSHIP ANY PERSON OTHER THAN LAW ENFORCEMENT OFFICERS.

1 "Lockout" means any action taken by the employer to
2 interrupt or prevent the continuity of work properly and
3 usually performed by the employee for the purpose and with the
4 intent of either coercing the employees into relinquishing
5 rights guaranteed by this Article or of bringing economic
6 pressure on employees for the purpose of securing the agreement
7 of their certified representative to certain collective
8 bargaining terms.

9 "Mediation" means an effort by an impartial third
10 party confidentially to assist in resolving, through
11 interpretation, suggestion, and advice, a dispute arising out
12 of collective bargaining between the employer and the
13 certified representative.

14 "Strike" means ~~the~~ A CONCERTED failure to report
15 for duty, ~~or-the~~ absence, ~~from-one's-position-or-the~~
16 stoppage of work, or ~~the~~ abstinence in whole or in part
17 from the full AND faithful, ~~or-proper~~ performance
18 of the duties of employment with the employer, or
19 deviation from normal or proper work duties or activities,
20 where any of the preceding are done in a concerted
21 manner for the purpose of inducing, influencing, or coercing
22 the employer in the determination, implementation, interpreta-
23 tion, or administration of terms or conditions of employment
24 or of the rights, privileges, or obligations of employment
25 or of the status, recognition or authority of the employee
26 or an employee organization.

27 Sec. 33-77. PERMANENT UMPIRE.

28 (a) There is hereby created the position of Permanent
29 Umpire, so as to provide for the effective implementation and
30 administration of Sections 33-79 and 33-82 of this Article
31 concerning Selection and Certification of Employee
32
33
34

1 Organization and Prohibited Practices. The Permanent Umpire
2 shall exercise the following powers and perform the following
3 duties and functions:

- 4 (1) To adopt, amend, and rescind, from time to
5 time, such rules, regulations and procedures
6 for the implementation and administration
7 of Sections 33-79 and 33-82 as are consistent
8 with this Article;
- 9 (2) To request from the employer or any employee
10 organization, and the employer or such
11 organization may at its discretion provide,
12 such relevant assistance, service and data
13 as will enable the Permanent Umpire to
14 properly carry out his functions;
- 15 (3) To hold hearings and make inquiries, to
16 administer oaths and affirmations, examine
17 witnesses and documents, take testimony and
18 receive evidence, compel by issuance of
19 subpoenas the attendance of witnesses ~~and not~~
20 ~~including-elected-County-officials~~; and the
21 production of relevant documents;
- 22 (4) To hold and conduct elections for unit
23 certification or decertification pursuant to
24 the provisions of this Article and to issue
25 said certification or decertification;
- 26 (5) To investigate and attempt to resolve or settle,
27 as provided in this Article charges of engaging
28 in prohibited practices. However, if the
29 employer and a certified representative have
30 negotiated a valid grievance procedure the
31 Permanent Umpire must defer to that procedure

1 for the resolution of disputes properly
2 submissible to the procedure absent a
3 showing that such deferral will result or has
4 resulted in the application of principles
5 repugnant to this Article. Furthermore,
6 the Permanent Umpire shall defer to state
7 procedures in those matters which are governed
8 by the Law Enforcement Officers Bill of Rights,
9 Article 27, Sections 727, et seq., Annotated
10 Code of Maryland;

11 (6) To obtain any necessary support services and
12 make necessary expenditures in the performance
13 of duties to the extent provided for these
14 purposes in the annual budget of Montgomery
15 County; and

16 (7) To exercise any other powers and perform any other
17 duties and functions as may be specified in
18 Sections 33-79 and 33-82 of this Article.

19 (b) The Permanent Umpire shall be appointed by the
20 County Executive, with the confirmation of the County Council,
21 shall serve for a term of five (5) years and shall be
22 eligible for reappointment PROVIDED HOWEVER THAT THE PERMANENT
23 UMPIRE SHALL NOT BE REAPPOINTED IF DURING THE PERIOD BETWEEN
24 60 DAYS AND 30 DAYS PRIOR TO THE EXPIRATION OF HIS TERM THE
25 CERTIFIED REPRESENTATIVE FILES A WRITTEN OBJECTION TO SUCH RE-
26 APPOINTMENT WITH THE COUNTY EXECUTIVE. The Permanent Umpire
27 shall be a person with experience as a neutral in the field of
28 labor relations and shall not be a person who, on account of
29 vocation, employment or affiliation can be classed as a repre-
30 sentative of the interests of the employer or any employee
31 organization.

1 (c) The Permanent Umpire shall be paid a per diem fee
2 as set forth by contract with the County and shall be
3 reimbursed for necessary expenses.

4 Sec. 33-78. EMPLOYEE RIGHTS.

5 (a) Employees shall have the right:

6 (1) To form, join, support, contribute to, or
7 participate in, or to refrain from forming,
8 joining, supporting, contributing to, or
9 participating in, any employee organization
10 or its lawful activities; and

11 (2) To be fairly represented by their certified
12 representative, if any.

13 (b) The Employer shall have the duty to extend to the
14 certified representative the exclusive right to represent
15 the employees for the purposes of collective bargaining
16 including the orderly processing and settlement of grievances
17 as agreed by the parties.

18 (c) A certified representative shall serve as the
19 bargaining agent for all employees and shall have the duty to
20 represent fairly and without discrimination all unit employees
21 without regard to whether the employees are or are
22 not members of the employee organization or are paying dues
23 or other contributions to it or participating in its affairs,
24 provided, however, that it shall not be deemed a violation of
25 this duty for a certified representative to seek enforcement
26 of an agency shop provision in a valid collective bargaining
27 agreement.

28 (d) The right of the certified representative to
29 receive membership dues deductions or agency shop provisions
30 shall be determined through negotiations, unless the
31 authority to negotiate such provisions has been suspended
32

1 under Section 33-84. No collective bargaining agreement
2 may include a provision requiring membership in, participation
3 in the affairs of or contributions to an employee organization
4 other than an agency shop provision.

5 Sec. 33-79. SELECTION, CERTIFICATION AND
6 DECERTIFICATION PROCEDURES.

7 (a) Procedures for determining the certified repre-
8 sentative for the unit may be initiated in accordance with
9 this subsection as follows:

- 10 (1) Any employee organization seeking certification
11 as representative of the unit may file a
12 petition stating its name, address, and its
13 desire to be certified with the Permanent
14 Umpire, and shall transmit forthwith a copy of
15 such, not including the names of the supporting
16 employees, to the employer. Said petition must
17 contain the uncoerced signatures of thirty
18 percent (30%) of the employees within the
19 unit signifying their desire to be represented
20 by the employee organization for purposes of
21 collective bargaining.
- 22 (2) Where an employee organization has been certified,
23 an employee within the unit may file a petition
24 with the Permanent Umpire and shall transmit
25 forthwith a copy of such to the employer and the
26 certified representative, not including the names
27 of the supporting employee for decertification
28 of the certified representative. The petition
29 must contain the uncoerced signatures of at least
30 thirty percent (30%) of the employees within the
31 unit alleging that the employee organization
32

1 presently certified is no longer the choice of
2 the majority of the employees in the unit.

3 (3) The employer may file a petition with the
4 Permanent Umpire seeking an election for certi-
5 fication of an employee organization or, where
6 an employee organization is so certified,
7 to cause decertification of the representative
8 where the employer has reason to believe
9 that the certified representative is not or is no
10 longer the choice of the majority of the employees
11 of the unit, and shall transmit a copy of such
12 to the employee organization seeking to obtain
13 or retain certification.

14 (4) Petitions may be filed between May 1, 1982, and
15 June 30, 1982. Thereafter, petitions may be
16 filed between September 1 and September 30, of
17 any year, but no sooner than 22 months following
18 an election held pursuant to this section.

19 (5) If a lawful collective bargaining agreement
20 of no longer than three (3) year's duration is
21 in effect, no petition shall be entertained
22 unless filed during September of the final year
23 of said agreement. A PROVISION FOR AUTOMATIC
24 RENEWAL SHALL NOT PREVENT AN AGREEMENT FROM
25 BARRING A PETITION, BUT NO SUCH AUTOMATIC RENEWAL
26 SHALL BAR A PETITION IF THE RENEWAL OCCURS
27 DURING THE THIRD YEAR OF AN AGREEMENT
28 (INCLUDING YEARS ADDED AS A RESULT OF SUCH
29 RENEWALS.)
30
31
32
33
34

1 (6) If, during the period of May 1, to June 30, 1982,
2 a petition is filed by the incumbent representa-
3 tive of unit employees certified under the
4 Employer/Employee Relations Article of this
5 Chapter, and no other employee organization
6 files a valid petition, that incumbent certified
7 representative shall be certified without an
8 election, provided it produces evidence,
9 acceptable to the Permanent Umpire, of majority
10 representation.

11 (b) If the Permanent Umpire determines that a petition is
12 properly supported and timely filed, the Permanent Umpire shall
13 cause an election of all eligible employees to be held within
14 a reasonable time, but no later than October 20 of that year,
15 to determine if and by whom the employees wish to be
16 represented, as follows:

- 17 (1) All elections shall be conducted under the
18 supervision of the Permanent Umpire and shall
19 be conducted by secret ballot at such time and
20 place as the Permanent Umpire may direct.
21 The Permanent Umpire may select and retain
22 services of an agency of the State of Maryland,
23 or similarly neutral body to assist in
24 conducting the election.
- 25 (2) The election ballots shall contain, as choices
26 to be made by the voter, the names of the
27 petitioning or certified employee organization,
28 the name or names of any other employee
29 organization showing written proof at least
30 ten (10) days before the election of at least
31 ten percent (10%) representation of the
32
33
34

- 1 employees within the unit, and a choice that
2 the employee does not desire to be represented
3 by any of the named employee organization(s).
- 4 (3) The employer and each party to the election may
5 be represented by observers selected in
6 accordance with such limitations and conditions
7 as the Permanent Umpire may prescribe.
- 8 (4) Observers may challenge for good cause the
9 eligibility of any person to vote in the
10 election. Challenged ballots shall be impounded
11 pending either agreement of the parties as to
12 the validity of such challenge or the Permanent
13 Umpire's decision thereon, unless the number
14 of challenges is not determinative, in which
15 latter event the ballot(s) shall be destroyed.
- 16 (5) After the polls have been closed, the valid
17 ballots cast shall be counted by the Permanent
18 Umpire in the presence of the observers.
- 19 (6) The Permanent Umpire immediately shall prepare
20 and serve upon the employer and each of the
21 parties a report certifying the results of the
22 election. If, and only if, an employee
23 organization has received the votes of a majority
24 of the employees who voted, the Permanent Umpire
25 shall certify the employee organization so
26 elected as the exclusive agent. If no employee
27 organization has received the votes of a
28 majority of the employees, the Permanent Umpire
29 shall certify no representative, ~~No run-off~~
30 ~~election shall be conducted.~~ BUT IF A MAJORITY

1 OF THE EMPLOYEES DO NOT VOTE FOR NO REPRESENTA-
2 TION, A RUN-OFF ELECTION SHALL BE CONDUCTED.
3 THE RUN-OFF ELECTION SHALL CONTAIN THE TWO
4 CHOICES WHICH RECEIVED THE LARGEST AND SECOND
5 LARGEST NUMBER OF VOTES IN THE ORIGINAL ELFC-
6 TION.

7 (c) The aforesaid certification of results shall be
8 final unless, within seven (7) days after service of the
9 report and certification, the employer or any other party serves
10 on all parties and files with the Permanent Umpire objections
11 to the election. Objections shall be verified and shall contain
12 a concise statement of facts constituting the grounds thereof.
13 The Permanent Umpire shall investigate the objections and, if
14 substantial factual issues exist, the Permanent Umpire shall
15 hold a hearing thereon. Otherwise, the Permanent Umpire may
16 determine the matter without hearing. The Permanent Umpire
17 may invite, either by rule or by ad hoc invitation, written
18 or oral argument to assist in determination of the merits of
19 the objections. If the Permanent Umpire finds that the
20 election was conducted in substantial conformity with this
21 Article, the Permanent Umpire shall make final that certifica-
22 tion initially issued. If the Permanent Umpire finds that the
23 election was not held in substantial conformity with this
24 Article, the Permanent Umpire shall cause another election
25 to be held pursuant to the provisions of this section.

26 (d) The cost of conducting an election shall be paid
27 by the County.

28 (e) Voluntary recognition is prohibited under this
29 Article, and no certification may be issued without an
30 election except as provided for in subsection 33-79(a)(6).
31
32

1 Sec. 33-80. COLLECTIVE BARGAINING.

2 (a) Upon certification of an employee organization,
3 as provided in Section 33-79, the employer and the said
4 certified representative shall have the duty, through their
5 designees, to bargain collectively with respect to those
6 subjects as follows:

- 7 (1) Salary and wages, provided however that
8 salaries and wages shall be uniform for all
9 employees in the same classification.
- 10 (2) Pension and retirement benefits for active
11 employees.
- 12 (3) Employee benefits such as, but not limited
13 to, insurance, leave, holidays, and vacation
14 AND PERSONAL PATROL VEHICLES.
- 15 (4) Hours and working conditions.
- 16 (5) Provisions for the orderly processing and
17 settlement of grievances concerning the
18 interpretation and implementation of the
19 collective bargaining agreement, which may
20 include binding third party arbitration.
- 21 THE GRIEVANCE PROVISIONS OF ANY COLLECTIVE
22 BARGAINING AGREEMENT, NOTWITHSTANDING THE
23 PROVISIONS OF SECTION 33-12(b) OF THIS CHAPTER,
24 SHALL BE THE EXCLUSIVE MEANS OF PROCESSING
25 GRIEVANCES CONCERNING ANY SUBJECT MATTER
26 ENUMERATED IN SECTION 33-80(a) OR ANY MATTER
27 ENUMERATED IN SECTION 33-80(b) AND (c), ABOUT
28 WHICH THE PARTIES HAVE VOLUNTARILY BARGAINED
29 DURING THE BARGAINING IMMEDIATELY PRIOR TO
30 THE CURRENT CONTRACT.

1 (b) The following subjects shall not be the subject
2 of collective bargaining:

3 (1) Pensions OF or any other matter related to
4 ~~retired~~ persons WHO HAVE RETIRED.

5 (2) Recruitment, selection, appointment, testing,
6 promotion, AND position classification, ~~or any~~
7 ~~other rule or action of the employer based~~
8 ~~on merit principles.~~

9 (3) Any matter which is the subject of state law
10 including, but not limited to, the Law
11 Enforcement Officers Bill of Rights, Article
12 27, Sections 727, et seq., Annotated Code of
13 Maryland.

14 (4) Any matter which would impair the rights of the
15 employer as set forth in subsection 33-80(c).

16 (c) Employer Rights.

17 This Article and any agreement pursuant hereto shall
18 not impair the right and responsibility of the employer:

19 (1) To determine the overall mission of the employer
20 and any agency of County government;

21 (2) To maintain and improve the efficiency of
22 operations;

23 (3) To determine the services to be rendered, the
24 operations to be performed and the technology
25 to be utilized;

26 (4) To determine the overall methods, processes,
27 means, job classifications or personnel by which
28 operations are to be conducted and to prescribe
29 and restrict the utilization of uniforms,
30 vehicles, and equipment OTHER THAN PERSONAL
31 PATROL VEHICLES.

- 1 (5) To direct or supervise employees;
2 (6) To suspend, discipline or discharge employees
3 SUBJECT TO APPLICABLE LAW;
4 (7) To transfer, assign, schedule, retain, layoff,
5 or recall employees;
6 (8) To relieve employees from duties because of
7 lack of work or funds, or under conditions
8 when the employer determines continued work
9 would be inefficient or nonproductive;
10 (9) To make and enforce rules and regulations not
11 inconsistent with a collective bargaining
12 agreement AND APPLICABLE LAW;
13 (10) To take whatever other actions may be necessary
14 to carry out the wishes of the public not
15 otherwise specified herein or limited by a
16 collective bargaining agreement; or
17 (11) To take actions to carry out the mission of
18 government in situations of emergency.

19 ~~(d) Nothing contained in this Article shall be construed~~
20 ~~to limit the discretion of the employer voluntarily to confer~~
21 ~~with any or all of its employees in the process of developing~~
22 ~~policies to effectuate or implement any of the enumerated~~
23 ~~rights set forth in subsection 33-80(e) or above~~

24 (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS LAW,
25 THE EMPLOYER MAY VOLUNTARILY BARGAIN ABOUT ANY MATTER ENUMER-
26 ATED IN SECTION 33-80(b) AND/OR THE EFFECTS UPON EMPLOYEES OF
27 THE EMPLOYER'S EXERCISE OF ANY RIGHTS LISTED IN SECTION 33-80(c).
28 IN THE EVENT THE EMPLOYER DOES AGREE TO BARGAIN ABOUT ANY OF THE
29 ABOVE MATTERS, AND AN AGREEMENT IS REACHED, THAT AGREEMENT SHALL
30
31
32
33
34

1 BE INCORPORATED IN THE COLLECTIVE BARGAINING AGREEMENT. THE
2 EMPLOYER'S ELECTION TO BARGAIN ABOUT A PROPOSAL SHALL NOT CON-
3 STITUTE A WAIVER OF THE EMPLOYER'S RIGHT NOT TO BARGAIN ABOUT
4 THE SUBJECT MATTER THEREOF UPON EXPIRATION OF ANY AGREEMENT
5 REACHED. NOTWITHSTANDING THE EMPLOYER'S ELECTION TO BARGAIN,
6 ABSENT A PROPOSAL AS SET FORTH ABOVE, SUCH PROPOSAL SHALL NOT
7 BE INCLUDED IN EITHER PARTY'S SUBMISSION OF A FINAL OFFER TO
8 THE IMPASSE NEUTRAL.

9 (2) IN THE EVENT THE EMPLOYER AND THE CERTIFIED
10 REPRESENTATIVE DISAGREE OVER WHETHER EITHER IS OBLIGATED TO
11 BARGAIN OVER ONE OR MORE CONTRACT PROPOSALS UNDER THIS LAW,
12 THAT DISAGREEMENT SHALL BE SUBMITTED UPON THE PETITION OF
13 EITHER PARTY TO THE PERMANENT UMPIRE WHO SHALL RESOLVE THE
14 DISPUTE AS PROMPTLY AS POSSIBLE AND AFTER SUCH EXPEDITIOUS
15 PROCEEDINGS AS THE PERMANENT UMPIRE DEEMS APPROPRIATE IN THE
16 CIRCUMSTANCES. THE PETITION SHALL STATE THE ISSUE OR ISSUES
17 TO BE RESOLVED AND SHALL BE ACCOMPANIED BY A WRITTEN STATE-
18 MENT OF THE REASONS WHY THE PETITIONING PARTY BELIEVES THE
19 MATTER IS OR IS NOT BARGAINABLE. THE DECISION OF THE PERMA-
20 NENT UMPIRE SHALL BE BINDING UPON THE PARTIES. FAILURE TO
21 SUBMIT A PETITION PURSUANT TO THIS SUBSECTION SHALL NOT PRE-
22 CLUDE A PARTY FROM FILING AN UNFAIR LABOR PRACTICE CHARGE
23 PURSUANT TO SECTION 33-82.

24 (e) Collective bargaining shall commence no later than
25 November 1, preceding the beginning of a fiscal year for which
26 there is no contract between the employer and the certified
27 representative and shall be concluded on January 20. The
28 resolution of an impasse in collective bargaining shall be
29
30
31
32
33
34

1 completed by February 1. These time limits may be waived
2 only by prior written consent of the parties.

3 (f) Any collective bargaining agreement which contains
4 a provision for automatic renewal or extension shall be void
5 in its entirety unless such renewal or extension requires
6 the consent of both parties. No agreement shall be valid if
7 it extends for less than one year or for more than three
8 years. All agreements shall become effective July 1 and end
9 on June 30.

10 (g) Any collective bargaining agreement shall
11 become effective only after ratification of the agreement
12 by the public employer and the CERTIFIED REPRESENTATIVE
13 ~~employees-in-the-bargaining-unit~~, except as provided
14 in subsection 33-81(b)(7). A certified representative
15 may provide its own rules for ratification procedures ~~7~~
16 ~~but-such-rules-shall-be-consistent-with-the-certified~~
17 ~~representative's-duty-of-fair-representation~~. Any
18 terms of a collective bargaining agreement which purport
19 to restrict the rights of management and of the public as
20 contained in subsection 33-80(c) of this Article or which
21 concern those subjects set forth in subsection 33-80(b)
22 shall be null and void and wholly unenforceable.

23 (h) A ratified agreement shall be binding on the
24 employer and the certified representative, AND SHALL BE RE-
25 DUCED TO WRITING AND EXECUTED BY BOTH PARTIES. Any term or
26 condition thereof which requires an appropriation of funds or
27 enactment, repeal or modification of a County law shall be
28 timely submitted to the County Council by the employer
29 and the employer shall make a good faith effort to have such
30 term or condition implemented by Council action. ~~but-the~~

1 ON OR BEFORE APRIL 25, THE COUNTY COUNCIL SHALL INDICATE BY A
2 MAJORITY OF FOUR (4) VOTES, ITS INTENTION TO APPROPRIATE
3 OR OTHERWISE IMPLEMENT THE AGREEMENT, OR ITS INTENTION NOT TO
4 DO SO, AND SHALL STATE ITS REASONS FOR ANY INTENT TO REJECT
5 ANY PART OR PARTS OF THE AGREEMENT. IN THE EVENT THE COUNCIL
6 INDICATES ITS INTENTION TO REJECT, IT SHALL DESIGNATE A REPRESENTATIVE
7 TO MEET WITH THE PARTIES AND PRESENT THE COUNCIL'S
8 VIEWS IN THEIR FURTHER NEGOTIATIONS. THIS REPRESENTATIVE
9 SHALL ALSO PARTICIPATE FULLY IN STATING THE COUNCIL'S POSITION
10 IN ANY ENSUING IMPASSE PROCEDURE. THE PARTIES SHALL THEREAFTER
11 MEET AS PROMPTLY AS POSSIBLE IN AN ATTEMPT TO NEGOTIATE AN
12 AGREEMENT ACCEPTABLE TO THE COUNCIL. EITHER OF THE PARTIES MAY
13 INITIATE THE IMPASSE PROCEDURE SET FORTH IN SECTION 33-81.
14 THE RESULTS OF THE NEGOTIATION OR IMPASSE PROCEDURE SHALL BE
15 SUBMITTED TO THE COUNCIL ON OR BEFORE MAY 10. ANY agreement
16 shall provide either for automatic reduction or elimination
17 of such conditional WAGE AND/OR benefits ADJUSTMENTS if the
18 Council fails to take such action or if funds are not appropriated
19 or if a lesser amount is appropriated.

20 Sec. 33-81. IMPASSE PROCEDURE.

21 (a) Prior to November 10 of any year in which the
22 employer and a certified representative bargain collectively,
23 they shall choose an Impasse Neutral either by agreement or
24 through the processes of the American Arbitration Association.
25 The Impasse Neutral shall be required to be available during
26 the period from January 20 to February 1. Fees and expenses
27 shall be shared equally by the employer and the certified
28 representative.

1 (b) (1) During the course of collective bargaining
2 either party may declare an impasse and
3 request the services of the Impasse Neutral.
4 If the parties have not reached agreement
5 by January 20, an impasse shall be deemed to
6 exist.

7 (2) Whenever an impasse has been reached, the
8 dispute shall be submitted to the Impasse
9 Neutral. The Impasse Neutral shall attempt
10 mediation by bringing the parties together
11 voluntarily under such favorable auspices as
12 will tend to effectuate the settlement of the
13 dispute.

14 (3) If the Impasse Neutral, in the Impasse Neutral's
15 sole discretion, finds that the parties are at
16 a bona fide impasse, the Impasse Neutral shall
17 require each party to submit a final offer
18 which shall consist either of a complete draft
19 of a proposed collective bargaining agreement
20 or a complete package proposal, as the Impasse
21 Neutral shall choose. If only complete
22 package proposals are required the Impasse
23 Neutral shall require the parties to jointly
24 submit a memorandum of all items previously
25 agreed upon.

26 (4) The Impasse Neutral may, in the Impasse Neutral's
27 discretion, require the parties to submit
28 evidence or make oral or written argument in
29 support of their proposals. The Impasse Neutral
30 may hold a hearing for this purpose at a time,
31
32
33
34

1 date, and place selected by the Impasse
2 Neutral. Said hearing shall not be open to
3 the public.

4 (5) On February 1 or prior thereto, the Impasse
5 Neutral shall select, as a whole, the most
6 reasonable, in the Impasse Neutral's judgment,
7 of the final offers submitted by the parties.
8 The Impasse Neutral may take into account only
9 the following factors:

- 10 a. Past collective bargaining contracts
11 between the parties including the past
12 bargaining history that led to such
13 contracts, or the pre-collective
14 bargaining history of employee wages, hours,
15 benefits, and working conditions.
- 16 b. Comparison of wages, hours, benefits,
17 and conditions of employment of similar
18 employees of other public employers IN THE
19 WASHINGTON METROPOLITAN AREA AND in Maryland.
- 20 c. Comparison of wages, hours, benefits,
21 and conditions of employment of other
22 employees of Montgomery County.
- 23 d. Wages, benefits, hours, and other
24 working conditions of similar employees
25 of private employers in Montgomery County.
- 26 e. The interest and welfare of the public.
- 27 f. The ability of the employer to finance
28 economic adjustments and the effect of
29 the adjustments upon the normal standard
30 of public services by the employer.

1 (6) The Impasse Neutral shall not compromise or
2 alter the final offer that he selects.
3 Selection of an offer shall be based on the
4 contents of that offer. No consideration shall
5 be given to, nor shall any evidence or argument
6 be received concerning the history of collective
7 bargaining in this immediate dispute, including
8 offers of settlement not contained in the offers
9 submitted to the Impasse Neutral. However,
10 the Impasse Neutral shall consider all previously
11 agreed upon items integrated with the specific
12 disputed items to determine the single most
13 reasonable offer.

14 (7) The offer selected by the Impasse Neutral,
15 integrated with the previous agreed upon items,
16 shall be deemed to represent the final agreement
17 between the employer and the certified repre-
18 sentative, without the necessity of ratification
19 by the parties, and shall have the force and
20 effect of a contract voluntarily entered into
21 and ratified as set forth in subsection 33-80(h).
22 above. The parties shall execute such agreement.

23 Sec. 33-82. PROHIBITED PRACTICES.

24 (a) The employer or its agents or representatives
25 are prohibited from:

26 (1) Interfering with, restraining, or coercing
27 employees in the exercise of any rights granted
28 to them under the provisions of this Article,
29 ~~provided that the discussion of any matter,~~
30 ~~argument, or opinion, or the dissemination~~
31 ~~thereof, whether orally, in writing or otherwise~~

1 shall not constitute or be evidence of
2 prohibited practice under any of the provisions
3 of this Article nor be grounds for invalidating
4 any election conducted under this Article; if
5 such discussion or dissemination contains no
6 threat of reprisal or promise of benefit;

7 (2) Dominating or interfering with the formation or
8 administration of any employee organization, or
9 contributing financial or other support to it,
10 pursuant to contract or otherwise; provided that
11 the employer and a certified representative may
12 agree to and apply a membership dues deduction
13 provision AS PROVIDED HEREIN AND TO REASONABLE
14 USE OF COUNTY FACILITIES FOR COMMUNICATING WITH
15 EMPLOYEES;

16 (3) Encouraging or discouraging membership in any
17 employee organization by discrimination in
18 regard to hiring, tenure, or other wages, hours
19 or conditions of employment;

20 (4) Discharging or discriminating against a public
21 employee because he has filed charges, given
22 testimony or otherwise lawfully aided in the
23 administration of this Article;

24 (5) Refusing to bargain collectively with a certified
25 representative;

26 (6) Refusing to reduce to writing or refusing to
27 sign a bargaining agreement which has been
28 agreed to in all respects;

29 (7) Refusing to process or arbitrate a grievance
30 if required under a grievance procedure contained
31 in a collective bargaining agreement;

1 (8) DIRECTLY OR INDIRECTLY OPPOSING THE APPROPRIA-
2 TION OF FUNDS OR THE ENACTMENT OF LEGISLATION BY THE COUNTY
3 COUNCIL TO IMPLEMENT AN AGREEMENT REACHED BETWEEN THE EMPLOYER
4 AND THE CERTIFIED REPRESENTATIVE PURSUANT TO THIS ARTICLE.

5 (9) ENGAGING IN A LOCKOUT OF EMPLOYEES.

6 (b) Employee organizations, their agents, or
7 representatives, and employees are prohibited from:

8 (1) Interfering with, restraining, or coercing
9 the employer or employees in the exercise
10 of any rights granted under this Article;

11 (2) Restraining, coercing, or interfering with
12 the employer in the selection of its
13 representatives for the purposes of collective
14 bargaining or the adjustment of grievances;

15 (3) Refusing to bargain collectively with the
16 employer if such employee organization is the
17 certified representative;

18 (4) Refusing to reduce to writing or refusing to
19 sign a bargaining agreement which has been
20 agreed to in all respects;

21 (5) Hindering or preventing, by threats OF VIOLENCE,
22 intimidation, force, or coercion of any kind
23 the pursuit of any lawful work or employment
24 by any person, public or private, or obstructing
25 or OTHERWISE UNLAWFULLY interfering with the
26 entrance to or egress from any place of employment,
27 or obstructing or UNLAWFULLY interfering with
28 the free and uninterrupted use of public roads,
29 streets, highways, railways, airports, or other
30
31
32
33
34

1 ways of travel or conveyance by any person,
2 public or private;

3 (6) Hindering or preventing by threats, intimidation,
4 force, coercion, or sabotage, the obtaining, use,
5 or disposition of materials, supplies, equipment
6 or services by the employer;

7 ~~(7) Taking or retaining unauthorized possession of~~
8 ~~property of the employer, public or private, or~~
9 ~~engaging in any effort to interfere with~~
10 ~~production, functions, or services of an~~
11 ~~employer, public or private, or refusing to~~
12 ~~do work or use certain goods or materials as~~
13 ~~lawfully required by the employer;~~

14 (8) Forcing or requiring any THE employer to assign
15 particular work to employees in a particular
16 employee organization or classification rather
17 than to employees in another employee
18 organization or classification;

19 (9) Causing or attempting to cause the employer
20 to pay or deliver or agree to pay or deliver
21 any money or other thing of value, in the
22 nature of an exaction, for services which are
23 neither performed OR to be performed ~~or which~~
24 ~~are not productive or not desired to be~~
25 ~~performed by the employer.~~

26 (c) A charge of prohibited practice may be filed by any
27 THE employer, employee organization, or any individual employee.
28 All charges shall CONTAIN A STATEMENT OF FACTS SUFFICIENT TO
29 ENABLE THE PERMANENT UMPIRE TO INVESTIGATE THE CHARGE ~~be sup-~~
30 ~~ported by the charging party.~~ The Permanent Umpire may request
31
32
33
34

1 withdrawal of and, if necessary, summarily dismiss charges
2 if they are insufficiently supported in fact or in law to
3 warrant a hearing, ~~however~~. The Permanent Umpire shall
4 have authority to maintain such independent investigation
5 as the Permanent Umpire determines necessary and to develop
6 rules and regulations therefore. If, UPON INVESTIGATION,
7 ~~the~~ Permanent Umpire finds that a charge is sufficiently sup-
8 ported to raise an issue of fact or law, the Permanent Umpire
9 shall hold a hearing on such charge upon notification to the
10 parties. In any hearing, charging parties shall present evidence
11 in support of the charges and the PARTY OR parties charged
12 shall have the right to file an answer to the charges, to
13 appear in person or otherwise and to present evidence in defense
14 of the charges.

15 (d) If the Permanent Umpire determines that the person
16 charged has committed a prohibited practice, the Permanent
17 Umpire shall make findings of fact and conclusions of law
18 and shall be empowered to issue an order requiring the person
19 charged to cease and desist from the prohibited practice and
20 to take such affirmative action as will remedy the violation(s)
21 of this Article. Remedies of the Permanent Umpire may include,
22 but shall not be limited to, REINSTATING EMPLOYEES WITH OR WITH-
23 OUT BACK PAY, MAKING EMPLOYEES WHOLE FOR ANY LOSS RELATING TO
24 COUNTY EMPLOYMENT SUFFERED AS A RESULT OF ANY PROHIBITED
25 PRACTICE, ~~orders withdrawing certification~~, withdrawing
26 or suspending the employee organization's authority
27 to negotiate or continue membership dues deductions, or
28 agency shop benefits, ~~withdrawing, suspending, or reinstating~~
29 ~~with or without back pay the employment or tenure of individual~~
30 employees. If the Permanent Umpire finds that the party or
31
32
33
34

1 parties charged have not committed any prohibited practices,
2 the Permanent Umpire shall make findings of fact and conclusions
3 of law and issue an order dismissing the charges.

4 (e) The Permanent Umpire shall not receive or entertain
5 charges based upon an alleged prohibited practice occurring
6 more than ~~four-(4)~~ SIX (6) months prior to the filing of the
7 charge.

8 Sec. 33-83. ~~USE-OF-EMPLOYEE-TIME~~

9 ~~Solicitation-of-membership-or-dues-payments-or-other~~
10 ~~internal-business-of-employee-organizations-shall-be-conducted~~
11 ~~during-the-non-duty-hours-of-the-employee-involved.--Employees~~
12 ~~who-represent-or-act-on-behalf-of-a-certified-representative,~~
13 ~~shall-not-be-on-paid-working-time-when-bargaining-collectively~~
14 ~~with-the-public-employer-or-when-adjusting-grievances.~~

15 EXPRESSION OF VIEWS.

16 THE EXPRESSION OF ANY VIEWS, ARGUMENT, OR OPINION, OR
17 THE DISSEMINATION THEREOF, WHETHER ORALLY, IN WRITING OR OTHERWISE
18 SHALL NOT CONSTITUTE OR BE EVIDENCE OF A PROHIBITED PRACTICE
19 UNDER ANY OF THE PROVISIONS OF THIS LAW NOR BE GROUNDS FOR
20 INVALIDATING ANY ELECTION CONDUCTED UNDER THIS LAW, IF SUCH
21 EXPRESSION OR DISSEMINATION CONTAINS NO THREAT OF REPRISAL OR
22 PROMISE OF BENEFIT.

23 Sec. 33-84. STRIKES AND LOCKOUTS.

24 (a) No employee or employee organization shall
25 either directly or indirectly cause, instigate, encourage,
26 condone or engage in any strike, nor the employer in any
27 lockout. No employee or employee organization shall obstruct,
28 impede, or restrict either directly or indirectly, any
29 attempt to terminate a strike.
30
31
32
33
34

1 (b) The employer shall not pay, reimburse, make whole,
2 or otherwise compensate any employee for or during the period
3 when said employee is directly or indirectly engaged in a
4 strike, nor shall the employer thereafter compensate an
5 employee who struck for wages or benefits lost during such
6 strike.

7
8 (c) If an employee or employee organization shall
9 violate the provisions of this section, the employer, AFTER
10 ADEQUATE NOTICE AND A FAIR HEARING BEFORE THE PERMANENT UMPIPF
11 WHO FINDS THAT THE AFORESAID VIOLATIONS HAVE OCCURRED AND
12 FINDS THAT ~~may take~~ any and OR all of the following .
13 actions ~~it deems~~ ARE necessary in the public interest MAY:

- 14 (1) IMPOSE ~~Imposition of~~ disciplinary action, in-
15 cluding DISMISSAL FROM ~~termination of~~ employment
16 of employees engaged in such conduct;
- 17 (2) ~~Termination of~~ TERMINATE OR SUSPEND employee
18 organization's dues deduction privilege, if
19 any;
- 20 (3) ~~Revocation of~~ REVOKE THE certification OF and
21 ~~disqualification~~ DISQUALIFY IT from participa-
22 tion in representation elections for a period
23 up to a maximum of two (2) years.

24 (d) Nothing contained herein shall prohibit an employer
25 from seeking any remedy available in a court of competent
26 jurisdiction.

27 Sec. 33-85. EFFECT OF PRIOR ENACTMENTS.

28 Nothing contained in this Article shall be construed
29 to repeal any law, executive orders, legislation, rules or
30 regulations adopted by the County and any department or
31
32
33
34

1 agency thereof not inconsistent with the provisions of this
2 Article.

3 Sec. 4. Severability.

4 The provisions of this Act are severable, and if any
5 provision, sentence, clause, section, word or part thereof
6 is held illegal, invalid or unconstitutional or inapplicable
7 ~~to any~~ person or circumstances, such illegality, invalidity,
8 unconstitutionality, or inapplicability shall not affect or
9 impair any of the remaining provisions, sentences, clauses,
10 sections, words or parts of the Act or their application to
11 other persons or circumstances. It is hereby declared to be
12 the legislative intent that this Act would have been adopted
13 if such illegal, invalid or unconstitutional provision,
14 sentence, clause, section, word or part had not been included
15 therein, and if the person or circumstances to which the Act
16 or any part thereof is inapplicable had been specifically
17 exempted therefrom.

18 Sec. 5. Effective Date.

19 This Act shall take effect on the 91st day following
20 the date on which it becomes law.

21 APPROVED:

22 _____
23 PRESIDENT, COUNTY COUNCIL

DATE

24 _____
25 COUNTY EXECUTIVE

DATE

26
27 ATTEST:

28 _____
29 SECRETARY FOR COUNTY COUNCIL

DATE

